CONTRIBUTORY NEGLIGENCE—RAILROADS—SOLDIER GUARDING BRIDGE.—The plaintiff, a soldier in the United States Army, was detailed to guard the bridge of the defendant company, over which were tracks for east bound and west bound trains. The inner rails were 4 feet apart; the outer rails were 8 inches from the side of the bridge, which was without railings. About 40 feet from the bridge the tracks curved, shutting out from view the approaching trains. At the approach of the east bound train the plaintiff stepped onto the opposite tracks. Just then the west bound train rounded the curve, without giving the signal of its approach. Before the plaintiff could escape, the train struck and threw him over the side of the bridge. Action was brought to recover damages for personal injuries. *Held*, the plaintiff may recover. *Kelly* v. *Pennsylvania R. Co.* (Pa.), 107 Atl. 780.

A person placed in a hazardous position by the order of a superior, cannot, as a matter of law, be charged with contributory negligence, if the acts charged as negligence were done in obedience to the general orders of the superior, with the knowledge or acquiescence of the defendant company. Persons acting under such orders are neither trespassers nor licensees, and the company owes them the duty of exercising that degree of care which is reasonable under the circumstances to safeguard their lives. The failure to perform that duty is negligence, for which the company is liable. *Reed* v. *Pittsburgh, etc., R. Co.*, 243 Pa. 562, 90 Atl. 359; *Van Zandt* v. *Philadelphia, etc., R. Co.*, 248 Pa. 276, 93 Atl. 1010.

The rights and duties of those employed on or about the tracks of a railroad are distinct from those of persons passing over the tracks at a public crossing. The duty of caution rests with those on the highway approaching the crossing. They must stop, look and listen, not only at the crossing, but until they have reached the opposite side. *Springs* v. *Virginia R. & P. Co.*, 117 Va. 826, 86 S. E. 65. Persons neglecting these precautions, who are injured by passing trains which they might have heard, had they listened, or seen, had they looked, are chargeable with such contributory negligence as will prevent a recovery. *Marks' Administrator* v. *Petersburg R. Co.*, 88 Va. 1, 13 S. E. 299; *Hogan's Administrator* v. *Tyler*, 90 Va. 19, 17 S. E. 723; *Berkeley* v. *Chesapeake & Ohio R. Co.*, 43 W. Va. 11, 26 S. E. 349.

At a grade crossing the rights of the public and the railroad company are said to be "mutual, reciprocal and co-extensive." See *Washington & Old Dominion R. Co.* v. *Zell's Adm'x*, 118 Va. 755, 88 S. E. 309. But it is not the duty of the railroad, under ordinary circumstances, to stop its trains at the crossing. It has the right of way. *New York C., etc., R. Co.* v. *Kistler*, 66 Ohio St. 326, 64 N. E. 130. But the railroad company is under a legal obligation to give reasonable and timely warning of the approach of a train to places where the public has a right to go. *Shelby's Administrator* v. *Cincinnati, etc., R. Co.*, 85 Ky. 224, 3 S. W. 157. It has been held, however, that the tracks in themselves are a warning to travelers of the danger of the crossing. *Van Winkle* v. *New York, etc., R. Co.*, 34 Ind. App. 476, 73 N. E. 157.

On the other hand, those employed on or about the railroad tracks

need exercise only that degree of vigilance against the danger of being run over by a train as is consistent with the faithful performance of their work, since to keep constantly on the lookout for approaching trains would defeat the very purpose for which they were employed. *Van Zandt* v. *Philadelphia, etc., R. Co., supra.* The railroad company must take cognizance of the perilous position occupied by such employees, directly or indirectly employed by it, and make reasonable provisions for the safeguarding of their lives. *Ominger* v. *New York, etc., R. Co.*, 4 Hun. (N. Y.) 159; *Goodfellow* v. *Boston, etc., R. Co.*, 106 Mass. 461.

It has been repeatedly held that failure to anticipate the negligence of another, which results in injury, is not contributory negligence, and does not defeat the right of the injured party to recover damages. *Wagner* v. *Philadelphia Rapid Transit Co.*, 252 Pa. 354, 97 Atl. 471. On the contrary, the law permits every man to assume, without imputation of negligence, that he is not exposed to a danger which can come to him only through a disregard of his duty on the part of some other person. *Parrott* v. *Barney*, 1 Sawy. 423, 2 Abb. U. S. 197, 18 Fed. Cas. 1236; *Welch* v. *New York, etc., R. Co.*, 182 Mass. 84, 64 N. E. 695. It is not negligence for a railroad company not to anticipate the presence of trespassers on its tracks. *Philadelphia & Reading R. Co.* v. *Hummell,* 44 Pa. 375, 84 Am. Dec. 457. A Federal Court, however, has denied that it is a general rule of law that failure to anticipate the negligence of another is never negligence. See *Erie Railroad Co.* v. *Kane*, 55 C. C. A. 129, 118 Fed. 223.

It is a settled rule of law that if one is placed in a position of imminent danger through the negligence of another, without fault on his own part, and, in his effort to extricate himself, selects, in the brief time at his disposal to decide and act, a more dangerous method than is necessary, the law will not impute to him contributory negligence. *Shaffer* v. *Beaver Valley Traction Co.*, 229 Pa. 553, 79 Atl. 122. One placed in a perilous position is not required to act with the same prudence that is ordinarily required under normal circumstances. *South-West Virginia Improvement Co.* v. *Smith,* 85 Va. 306, 7 S. E. 365; *Richmond Railway and Electric Co.* v. *Hudgins,* 100 Va. 409, 41 S. E. 736; *Chicago & Alton Railroad Co.* v. *Corson,* 198 Ill. 98, 64 N. E. 739. Thus, when one operating a defective crane, in an effort to prevent his fellow workmen from being injured or killed, causes the crane to fall, by bringing it to a sudden stop, and the crane kills him, he is not guilty of contributory negligence. *Smith* v. *Standard Steel Car Co.*, 262 Pa. 550, 106 Atl. 102.

For a more extended discussion of the duties of travelers at public crossings, see 3 VA. LAW REV. 466.

DAMAGES—BREACH OF CONTRACT—PROSPECTIVE PROFITS.—The defendants entered into a building contract with the plaintiffs, but, before the plaintiffs began the construction of the building, the defendants breached the contract. The plaintiffs then brought an action on the contract, claiming as damages the prospective profits they would have made by